IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

CIVIL SECOND APPEAL No. 127 of 2006

LR'S OF KAJOD
V/S
HEERA

Mr. BK BHATNAGAR, for the appellant / petitioner

Date of Order : 20.7.2006

HON'BLE SHRI N P GUPTA,J.

ORDER

Heard learned counsel for the appellant.

The two learned Courts below had decreed the suit of the plaintiff for possession of the suit property, and has granted an injunction restraining the defendants from disturbing the possession of the plaintiff. The decree for mesne profits has also been passed. The suit was filed in the year 1995, alleging inter-alia, that the plaintiff had been allotted the plot by the UIT, and since then he is in possession, thereon in the year 1982, he constructed the residential apartment, however, in the year 1988, when the plaintiff had gone to Jodhpur, the defendant encroached upon the land by breaking boundary wall, and included the land in his plot, not only this, he broke open the locks, and took possession of the premises as well, apart from having stolen away all the belongings. It is also alleged that on 8.4.88, when the plaintiff returned, he was not allowed to go on the premises. For this, the report was

also lodged. Inter-alia with these averments, the decree was prayed.

The case of the defendant is that the plot No.P-4/91 was allotted to the defendant No.2, Amba Lal on 30.5.82, while plot No.P-4/90 was allotted to Kajod, the deceased defendant No.1., and after taking measurement of the site, possession was delivered to the defendants, and since then they are in possession. The two defendants were father and son. It is then alleged that however, by mistake of the department, the plot number was wrongly described as 94 instead of 91, while there was no land by the mark of plot No.94, and the boundary wall was constructed by the defendant in 1982 itself. These facts were in knowledge of the plaintiff, but he lied low, and has raised the issue belatedly by concocting the false stories.

The learned trial Court after taking into account the various documents, and oral evidence, decided the issues No.1 and 5 relating to the precise controversy, as to whether the plot in question, is in the ownership of the plaintiff, or is allotted to defendant No.2, whereupon the defendant No.2 has constructed the apartment, and found that this plot was not allotted to Amba Lal, rather from Ex.2, it is established to have been allotted to the plaintiff. Similarly, regarding possession also, the evidence has been considered, and the issues have been decided in favour of the plaintiff, finding that the Kelu posh house was constructed by the plaintiff only, and the

plaintiff was in possession of the premises. Then deciding issues No.2 and 3 also, it was found that the defendants have illegally encroached, and have included the plaintiff's house in their house, to which period of 12 years has not expired, therefore, the issues No.2 and 3 were decided in favour of the plaintiff, and thus, the suit has been decreed.

The learned lower Appellate Court has also endorsed the findings.

In my view, when the plot is clearly shown to have been allotted to the plaintiff by the UIT, and it is not allotted to the defendants, simply because the defendants may have felt to have been allotted that plot, does not confer any title on them, more particularly when the defendant was allotted plot No.94.

This finding of fact, recorded by the learned Courts below, is not shown to be vitiated on any of the grounds available under Section 100 CPC.

Thus, the appeal does not involve any substantial question of law and the same is, therefore, dismissed summarily.

(N P GUPTA),J.

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